UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

OTIS ELEVATOR COMPANY[1]

Employer

and Case 37-RC-4035

INTERNATIONAL UNION OF
ELEVATOR CONSTRUCTORS,
LOCAL 126, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition filed under Section 9(c) of the National Labor Relations Act (the Act), a hearing was held before a hearing officer of the National Labor Relations Board (the Board).

Pursuant to provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer's Construction Modernization and Field Operations Manager, Kelton Dixon, testified that Otis Elevator Company (the Employer) is engaged in the business of constructing, installing, servicing and repairing elevators and similar equipment in various locations including Hawaii, Guam and Saipan. The parties stipulated that during calendar year 2001, the Employer derived gross revenues from its operations on Guam and

[1] The Employer's name appears as described in the record.

Saipan in excess of $2,000,000 and the Employer derived similar gross revenues through December 18th in calendar year 2002. Dixon testified, without contradiction, that the Employer purchased and received goods and supplies from outside Guam in excess of $5,000, which goods and supplies were shipped directly to the Employer in Guam. At the hearing, the Employer conceded that its Guam operations met the Board's discretionary standards for the assertion of jurisdiction but reserved its right to contest the Board's jurisdiction over its operation on Saipan. However, in its post-hearing brief, the Employer withdrew its contentions that the Board lacks jurisdiction in this matter and that it (the Employer) is not an "employer" within the meaning of the Act. In so doing, the Employer noted that it is a Delaware corporation registered to conduct business on the island of Guam. In these circumstances, I have concluded that the Employer is engaged in commerce and that it will effectuate the purposes of the Act to assert jurisdiction herein. In finding that the Employer meets the Boards discretionary standards for the assertion of jurisdiction on a direct basis, I note that the Board has previously asserted jurisdiction over the Employer. See Iron Workers Local 433, (Otis Elevator Company) et al, 309 NLRB 273, (1992); Iron Workers Local 433, (Otis Elevator Company) et al, 297 NLRB 964 (1990).

3. The parties stipulated, and on that basis I have concluded, that International Union of Elevator Constructors, Local 126, AFL-CIO (the Petitioner) is a labor organization within the meaning of Section 2(5) of the Act.

4. Pursuant to its motion to amend the petition, the Petitioner seeks to represent a unit comprised of all full-time and regular part-time employees employed by the Employer on the islands of Guam and the Northern Marianas (Saipan) engaged in the service, repair and

construction of elevators and kindred equipment; excluding all other employees, guards and supervisors as defined in the Act.[2]

The Employer contends that Jimmy Cabrera should be excluded from the unit on the basis that he is a supervisor within the meaning of the Act; that Francis Aguon should be excluded from the unit on the basis that he does not share a community of interest with employees in the petitioned-for unit, and that James Heil should be excluded from the unit on that basis that he is a managerial employee and does not share a community of interest with employees in the petitioned-for unit. The Petitioner takes the opposite view. As discussed below, I find that Cabrera, Aguon and Heil are statutory employees who share a community of interest with employees in the petitioned-for unit, and who should be included therein.

FACTS[3]

A. The Employer's Operations on Guam

The Employer has contracts to provide service and repair for approximately 330 existing elevators on the island of Guam. In addition, the Employer constructs and installs new elevators. The Employer's operation on Guam is headed by Location Manager Colin Kim. Maintenance Specialist Paul Wiesehuegel and Construction Superintendent Plutarco Avila report directly to Kim. Wiesehuegel, in turn, supervises Joshua Sulio, Rodel Tibule, Tom Lee Willbanks and Arthur Oclima. Sulio, Tibule, and Willbanks have regular routes to provide service for existing

[2] The parties stipulated that Location Manager Colin Kim, Maintenance Specialist Paul Wiesehuegel, Construction Superintendent Plutarco Avila, Sales Representative Ron Brown and Administrative Assistant Dianne Pangelinian should be excluded from the unit.

[3] The only evidence presented at the hearing was the testimony of Kelton Dixon, the Employer's Construction Modernization and Field Operations Manager, who is based in Honolulu.

elevators and Oclima generally performs repair work.[4] Employees Jimmy Cabrera and Clint Omisong report to Avila. Cabrera and Omisong, acting as a team, perform almost all of the Employer's construction work on Guam (i.e., installation of new elevators).[5]

The Employer's Guam office has a connected warehouse. Kim, Wiesehuegel, and Avila have cubicles at the office. A salesperson and an administrative assistant also work in the office. One employee, Francis Aguon, works in the warehouse and drives a truck to deliver equipment and tools to construction worksites. The rest of the employees report either to the site at which they were working the previous day or report to the office before beginning their route or field assignment. The Employer's Guam office is open from 7:00 a.m. to 4:30 p.m.

The five employees who the parties agree should be included in the bargaining unit (Sulio, Tibule, Willbanks, Oclima and Omisong) work Monday through Friday from 7:30 a.m. to 4:00 p.m. Each is paid an hourly rate,[6] receives paid holidays and vacation, is eligible for overtime pay, and is required to fill out weekly time tickets in order to report his hours and receive his weekly pay. All five perform work directly on elevators, whether servicing, repairing or installing them. A couple of these employees rotate on-call duty and are dispatched from the Employer's dispatch center in Connecticut when a customer call's the Employer's hot line to report an after-hours problem with an elevator.

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[4] Service calls usually involve minor work that can be performed by one employee in a relatively short amount of time. Repair work, on the other hand, usually requires that an elevator be shut down for one or more days and usually requires more than one employee -- either for safety reasons or because of the nature of the work.

[5] The parties stipulated that Kim, Wiesehuegel and Avila are properly excluded from the unit on the basis that they are statutory supervisors and that the salesperson and administrative assistant are also properly excluded. The parties also stipulated that Sulio, Tibule, Willbanks, Oclima and Omisong should be included in the bargaining unit.

[6] Their hourly rates of pay range from $12/hour to $20/hour.

Aguon, the sole warehouse employee, works the same hours as the employees above. He is also paid an hourly rate,[7] is eligible for overtime, is required to fill out a weekly time ticket, receives a weekly paycheck, and receives the same paid holidays and vacation time as the employees described above. Aguon does not work directly on elevators. Rather, he works in the warehouse and is responsible for ordering and maintaining parts and for delivering and retrieving parts and tools to and from the Employer's worksites. Aguon operates a forklift at the warehouse and drives a truck from the warehouse to the worksites. The employees who work directly on the elevators go to Aguon at the warehouse when they need certain parts. Aguon reports to Location Manager Kim.

Dixon estimated that the Employer installs ten to twelve new elevators on Guam each year and that the average installation takes about one month. Cabrera and Omisong usually work as a team on the installation of new elevators. Cabrera and Omisong occasionally perform repair work.[8] Cabrera and Omisong report to Avila. Cabrera has about fifteen years of experience in the business, whereas Omisong has about three to four years of experience.

Cabrera does not have authority to hire or promote employees, nor is he engaged in the hiring process. Cabrera does not evaluate Omisong or other employees. There is no evidence that Cabrera has authority to approve overtime or that he attends supervisory meetings or has a desk at the Employer's office. Cabrera does not approve requests for time off. Omisong requests vacation time from Construction Superintendent Avila. If he is sick, Omisong calls Avila.

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[7] Aguon receives $9.50/hour.

[8] Omisong is sent to Saipan once or twice a year to assist with repair work.

The Employer contends that Cabrera has the authority to terminate employees in certain egregious circumstances. The Employer's contention is based on Dixon's testimony that he informed Cabrera, on some unknown date, that Cabrera has the authority to terminate employees in circumstances where an employee does not show up for work for days, is "completely" negligent,[9] or is stealing. Dixon could not provide an example of Cabrera having exercised such authority and admitted that he had not seen reference to such authority described in Cabrera's job description. Moreover, when questioned during cross-examination, Dixon explained, "all of our guys have . . . authority [to terminate employees] that rely on the help of another guy." Dixon further testified that he told all of the employees that they have such authority. By contrast, admitted supervisors Avila and Wiesehuegel have authority to terminate employees for progressively poor quality work. Finally, Dixon testified that Location Manager Kim could overturn any termination decision made by Cabrera or another employee.

Dixon also testified that Cabrera has the authority to assign work to Omisong, that he in fact makes such work assignments, and that he exercises independent judgment in making those assignments. When they work together, Dixon estimated that Cabrera spends about 80% of his time performing hands-on work, 15% of his time directing the work of Omisong, and 5% of his time interacting with the construction contractor for that project.

New elevators and similar equipment come with blueprints that are prepared by the Employer's factory or service center on the Mainland. The blueprint is used by the company constructing the building to ensure that the elevator will fit. A job plan is also prepared for each new installation showing "the recipe to install the elevator in a timely fashion and within the

[9] When asked for an example of "complete negligence" for which Cabrera could terminate someone, Dixon gave an example in which an employees' negligence resulted in the death of another person.

hours that were sold." The job plan is prepared by Dixon or Avila. Cabrera then uses the job plan to determine what sequence to follow in constructing and installing the new elevator. Each day, Cabrera generally prepares a list of tasks to be done on the project and then he crosses the tasks off as they are completed. Dixon testified that Cabrera uses the job plan in order to determine what Omisong should do next.[10] Cabrera assigns work to Omisong because Cabrera has greater technical experience than Omisong.

In addition to telling Omisong what task to do next, Cabrera will check Omisong's work to ensure that it is correct. For example, Cabrera will measure an entrance frame built by Omisong to determine if the openings are square, level and the right distance apart. If the measurements are not correct, Cabrera will instruct Omisong to fix his work.

Finally, if Cabrera is assigning a task that Omisong has not performed before, he will show Omisong how to do it.

B. The Employer's Operation on Saipan

Saipan is an island located approximately 200 miles, and about a 20-minute plane ride, from Guam. The Employer's only permanent employee on Saipan is James Heil. Heil has an office on Saipan and reports to Guam's Location Manager Kim. Kim goes to Saipan about four times a year. The Employer has about 60 existing elevator units on Saipan that Heil is responsible to service. In addition, Heil is responsible for making sales calls on potential customers, selling upgrades, giving estimates for repairs, and ordering parts. If a repair job on

[10] The record contains the following exchange:

Q: My question was how does Mr. Cabrera know what is the appropriate next step to have Mr. Omisong do?

A: Because in installing an elevator, there's a sequence that has to occur.

Saipan requires more than one person, Heil consults with Wiesenhuegel in Guam. Wiesenhuegel will then select an employee from Guam to send to Saipan to assist Heil. An employee is sent to Saipan to perform repair work about once or twice a year.[11] The Employer also sends out a team of two employees from Guam or Hawaii to perform installation work.[12] Dixon estimated that one elevator is installed on Saipan each year and that the installation takes about one month.

Heil is paid an hourly wage rate, receives the same paid holidays and vacation time as employees on Guam, is eligible for overtime, is required to fill out a weekly time ticket, and receives a weekly paycheck. Heil's weekly time ticket is submitted to the Guam office. Heil's regular hours are the same as those of the unit employees on Guam – 7:30 a.m. to 4:00 p.m. Heil attends annual safety training on Guam with the Guam employees. When he takes a vacation, Heil is replaced by Construction Superintendent Avila or by employee Oclima.

Heil purchases his own office supplies and has a credit line at a local hardware store to purchase certain tools or parts. If Heil does not have a part, tool or equipment on hand and he cannot purchase it locally, he contacts the Guam office, which sends him the equipment. If the Guam office does not have the equipment, it contacts Dixon in Honolulu and he arranges for the equipment to be sent to Saipan. Heil has a monetary limit on the purchases that he can make without authorization from higher up, but Dixon did not know the amount of that limit. Dixon also did not know whether the line of credit that Heil has at a hardware store on Saipan is in the name of the Employer or in Heil's own name.

Although dealing with potential customers is part of his job, Heil cannot determine a selling price without consulting with Location Manager Kim. Dixon did not know whether Heil

[11] The Employer usually sends Omisong to perform repairs.

[12] The Employer usually sends Cabrera and Omisong from Guam.

is authorized to offer a discount, rebate or refund to a customer, change the terms of a service contract, or sign a service contract on behalf of the Employer. There is no evidence that Heil is involved in formulating management policies, personnel policies, or labor relations policies for the Employer. Information such as educational articles, safety bulletins, and accident reports is distributed by the Employer to its location managers. Kim, the Guam Location Manager, then forwards this information to Heil by e-mail.

ANALYSIS

A. Whether Jimmy Cabrera Should be Excluded as a Section 2(11) Supervisor

The Employer contends that Cabrera is a statutory supervisor who must be excluded from the unit. The Petitioner takes the opposite position.

The term "supervisor" is defined in Section 2(11) of the Act as:

> [A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances. or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

"To meet this definition, a person needs to possess only one of the specific criteria listed, or the authority to effectively recommend, so long as the performance of that function is not routine but requires the use of independent judgment." Nymed, Inc., d/b/a Ten Broeck Commons, 320 NLRB 806, 809 (1996). As observed by the Board in Providence Hospital, 320 NLRB 717, 725 (1996):

> In enacting Section 2(11) of the Act, Congress distinguished between true supervisors who are vested with "genuine management prerogatives," and "straw bosses, lead men, and set-up men," who are protected by the Act even though they perform "minor

> supervisory duties." NLRB v. Bell Aerospace Co., 416 U.S. 267, 280-81 (1974).

Although the existence of any of the Section 2(11) powers, "regardless of the frequency of its exercise is sufficient," the "failure to exercise [supervisory powers] may show the authority does not exist." Laborers Local 341 v. NLRB, 564 F.2d 834, 847 (9th Cir. 1977). In this regard, isolated and infrequent incidents of supervision do not elevate a rank-and-file employee to a supervisory level. NLRB v. Doctors' Hospital of Modesto, 489 F.2d 772, 776 (9th Cir. 1973). Similarly, an employee does not become a supervisor if his or her participation in personnel actions is limited to a reporting function and there is no showing that it amounts to an effective recommendation that will affect employees' job status. Ohio Masonic Home, 295 NLRB 390, 393 (1989); Northcrest Nursing Home, 313 NLRB 491, 497-498 (1993).

In determining whether persons are statutory supervisors, "[j]ob titles are unimportant." Laborers Local 341 v. NLRB, supra; Arizona Public Service Co. v. NLRB, 453 F.2d 228, 231 fn. 6 (9th Cir. 1971). Whether an individual is a supervisor is to be determined in light of the individual's actual authority, responsibility, and relationship to management. See Phillips v. Kennedy, 542 F.2d 52, 55 (8th Cir. 1976). Thus, the Act requires "evidence of actual supervisory authority visibly demonstrated by tangible examples to establish the existence of such authority." Oil Workers v. NLRB, 445 F.2d 237, 243 (D.C. Cir. 1971). It is well established that mere conclusory statements, without such supporting evidence, are not sufficient to establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193 (1991). Although a supervisor may have "potential powers . . . theoretical or paper power will not suffice. Tables of organization and job descriptions to do not vest powers." Oil Workers v. NLRB, supra, at 243. In addition, the evidence must show that the alleged supervisor knew of his or her authority to exercise such power. NLRB v. Tio Pepe, Inc., 629 F.2d 964, 969 (4th Cir. 1980).

Finally, in proving supervisory status, the burden of proof is on the party alleging such status. NLRB v. Kentucky River Community Care, Inc., 532 U.S. at 711; Allstate Insurance Co., supra; Tucson Gas & Electric Company, 241 NLRB 181 (1979).

In the instant case, the record shows that Cabrera does not hire, transfer, suspend, lay off, recall, promote, reward, or discipline employees or effectively recommend such actions. Based on Dixon's conclusory testimony, the Employer contends that Cabrera has the authority to terminate employees for egregious acts. A mere conclusory statement, however, without supporting evidence or tangible examples, is insufficient to establish supervisory authority. Sears, Roebuck & Co., supra; Oil Workers, supra. Dixon was unable to provide any examples of Cabrera having exercised this authority. Dixon further testified that he has granted termination authority to all employees who "rely on the help of another guy" and the record evidence shows that employees always work together on installations and repairs. Thus, if I accepted the Employer's argument, I would have to find that virtually every employee possesses this indicia of supervisory status. Common sense dictates that not every employee can be a statutory supervisor. See Harborside Healthcare, 330 NLRB 1334, 1336 (2000); North Miami Convalescent Home, 224 NLRB 1271, 1272 (1976). Finally, I note that Dixon testified that Cabrera's alleged authority to terminate employees is subject to review and rescission by Location Manager Kim. For these reasons, I conclude that the record does not establish that Cabrera, in fact, has authority to terminate employees.

The record is also devoid of evidence that Cabrera recommends raises or promotions for employees; approves overtime, work schedules or vacations for employees; directs the transfer of employees; or handles grievances for the Employer.

With regard to Cabrera's assignment of work to Omisong, the evidence establishes that Cabrera assigns tasks based upon the job plan prepared for the installation at hand. The job plan is prepared by Dixon or Avila. Cabrera then uses the job plan to determine what sequence to follow in constructing and installing the new elevator. Each day, Cabrera generally prepares a list of tasks to be done on the project and then he crosses the tasks off as they are completed. In sum, Cabrera assigns work to Omisong because he has greater technical experience than Omisong and he assigns the task within the parameters and sequence specified by the job plan.[13] The evidence also established that the nature of the equipment being installed will dictate the type of tasks that need to be completed.[14] In these circumstances, where the assignment of tasks is governed by the nature of the equipment being installed and by the job plan prepared for that installation, Cabrera is making such work assignments in a routine manner without exercising independent judgment within the meaning of Section 2(11) of the Act. North Shore Weeklies, 317 NLRB 1128 (1995).

For these reasons, I conclude that Cabrera is not a statutory supervisor[15] and accordingly, he will be included in the unit.

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[13] See footnote 10, above.

[14] The example given at the hearing was that the tasks that are assigned when installing a dumbwaiter are different from the tasks assigned in installing a hydraulic elevator.

[15] The Employer points out that Cabrera is paid the highest hourly rate of the employees sought to be represented by Petitioner. However, secondary indicia alone, such as differences in pay, are insufficient to establish that an individual is a statutory supervisor. Waterbed World, 286 NLRB 425, 426 (1987).

B. Whether Francis Aguon Should be Included in the Unit

The Employer argues that Aguon must be excluded from the unit because (1) he does not perform the work covered by the language of the petitioned-for unit and (2) he does not share a sufficient community of interest with the other employees.

I find no merit in the Employer's contention that Aguon must be excluded from the unit because he does not perform the work covered by the language of the petitioned-for unit. Based on the position that it articulated at the hearing, the Petitioner clearly seeks to include Aguon in the unit and is willing to proceed to an election if Aguon is included. If I find that an appropriate unit includes Aguon, then I will direct an election in a unit that includes his job classification.

As to the Employer's second argument, I find that Aguon shares a sufficient community of interest with the employees so as to be included in this unit. Aguon works in the warehouse connected to the Guam office. Like other employees, he is paid an hourly wage rate, receives paid holidays and vacations, and is eligible for overtime. Aguon submits a weekly time ticket and is paid on a weekly basis. Aguon supplies the unit employees with tools and parts, sometimes driving the supplies out to worksites. Finally, although Aguon is supervised by Location Manager Kim, the other employees report to supervisors (Avila and Wiesenhuegel) who, in turn, report to Kim. In deciding to include Aguon, I note that excluding him from the unit would result in a residual unit of one employee, a result the Board has long found to be undesirable. North Jersey Newspaper Companies, 322 NLRB 394 (1997); Gateway Equipment Co., 303 NLRB 340, 342 (1991). Indeed, in similar circumstances the Board has included such lone residual employees in a petitioned-for unit. See, e.g., United Dairy Farmers Cooperative Assn., 242 NLRB 1026 (1979) (helper included in unit). Accordingly, Aguon will be included in the unit.

C. Whether Heil is a Managerial Employee

Managerial employees are defined as those employees who "formulate and effectuate management policies by expressing and making operative the decisions of their employer." NLRB v. Bell Aerospace Co., 416 U.S. 267, 288 (1974), quoting Palace Laundry Dry Cleaning, 75 NLRB 320, 323 n. 4 (1947). As the Supreme Court has stated:

> [T]hese employees are "much higher in the managerial structure" than those explicitly mentioned by Congress which "regarded [them] as so clearly outside the Act that no specific exclusionary provision was found necessary." Managerial employees must exercise discretion within, or even independently of, established employer policy and must be aligned with management. Although the Board has established no firm criteria for determining when an employee is so aligned, normally an employee may be excluded as managerial only if he represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy.

NLRB v. Yeshiva University, 444 U.S. 672, 103 LRRM 2526, 2531 (1980).

While the ability to pledge an employer's credit may show managerial status, the Board has also held that individuals are not managerial employees even though they may pledge their employer's credit, and/or be granted considerable discretion in doing so, provided that such discretion is circumscribed by established company policy. See Transit Casualty Company, 83 NLRB 857, 859 (1949); Lumberman's Mutual Casualty Co. of Chicago, 75 NLRB 1132, 1139 (1948). The burden is on the party asserting managerial status to establish that the individual is, in fact, a managerial employee who should be excluded from the unit. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 711-712 (2001); Allstate Insurance Co., 332 NLRB No. 66, slip op. at 1 and fn. 2 (2000).

In the instant case, the Employer has failed to establish that Heil is a managerial employee. There is no evidence that Heil controls or implements personnel or labor relations policies or any other Employer policies. Nor does the evidence establish that Heil can exercise

any discretion when entering into service or installation contracts with customers by independently setting prices or by offering offer rebates, discounts or refunds. Finally, the record does not establish that the line of credit used by Heil at a hardware store on Saipan is in the Employer's name, but does establish that it has an unspecified limit.

The Employer, citing Iowa Southern Utilities, 207 NLRB 341,345 (1973), argues that Heil has a potential conflict in interest between his employer and his fellow workers such that he should be excluded as a managerial employee. Such a conflict of interest exists, the Employer argues, because Heil is the sole employee on Saipan and because Heil occasionally has to call for the assistance of other unit employees. The Employer's argument is without merit. The record establishes that Heil performs the same service work as the unit employees on Guam. Heil's sales work is carried out under the supervision of the Guam Location Manager who must be consulted as to pricing. The evidence does not establish that Heil can alter existing service contracts, sign new service contracts, or negotiate incentives such as discounts, rebates or refunds. Based on the record evidence, Heil appears to be a liaison between the Saipan customers and the Guam office. As to the Employer's contention that Heil occasionally calls for the services of unit employees, the record merely shows that Heil notifies the Guam office when he needs someone for repair or installation work. Heil does not select the employee who is sent to Saipan and the record is devoid of any evidence that he supervises that employee once he arrives in Saipan. In these circumstances, I cannot find that Heil has a conflict in interest that elevates him to the level of a managerial employee.

For all of these reasons, I find that the Employer has not met its burden of establishing that Heil is a managerial employee.

D. Whether Heil Shares a Sufficient Community of Interest with the Employees On Guam

The Employer also objects to Heil's inclusion in the bargaining unit on the basis that he does not share a sufficient community of interest with the employees on Guam.

Under Section 9 of the Act, the Board will only hold an election in a unit if the unit is "appropriate." It is well established that a petitioner need not seek representation in the most appropriate or optimum unit; the Act only requires that the unit be "appropriate." Overnite Transportation Co., 322 NLRB 723 (1996) citing Black & Decker Mfg. Co., 147 NLRB 825, 828 (1964); Dezcon, Inc., 295 NLRB 109 (1989). It is well established that the Board's single facility presumption is not applicable when a broader multi-location unit is sought by petitioner. Hazard Express, Inc., 324 NLRB 989 (1997); Overnite Transportation, 322 NLRB at 726 n. 6; Capital Coors Co., 309 NLRB 322 (1992); and Carson Cable TV v. NLRB, 795 F.2d 879, 123 LRRM 2225 (9th Cir. 1986). Thus, in determining the appropriateness of the petitioned-for multi-facility unit, the Board evaluates traditional community of interest factors, including: similarity in employee skills, duties and working conditions; central control of labor relations; functional integration of the facilities, including employee interchange; geographic separation of the facilities; and collective bargaining history. Carson Cable, supra, 123 LRRM at 2229.

Applying the foregoing principles, I find that Heil shares a sufficient community of interest with the Guam employees to warrant his inclusion in unit sought by Petitioner. In reaching this decision, I rely on a number of factors. Heil performs the same service work on the same types of equipment as the Guam employees. Just as the Guam employees, Heil is paid an hourly rate, receives paid holidays and vacations, is eligible for overtime, and fills out a weekly time ticket for his weekly paycheck. Heil's time ticket is submitted to the Location Manager in the Guam office. There is no evidence that Heil's benefits differ from those of the Guam

employees. Heil consults with the Guam office to establish prices, to obtain help for repairs and installation, and to obtain some tools and equipment. The Guam office forwards information from the Employer's Mainland operation to Heil on Saipan. As to employee interchange, Heil attends annual safety training with the other unit employees, a Guam employee is sent to Saipan two to three times a year to perform repair and installation work, and a Guam employee is sent to cover for Heil when he is on vacation.

As with Aguon above, in deciding to include Heil, I note that excluding him from the unit would result in a residual unit of one employee, a result the Board has long found to be undesirable. North Jersey Newspaper Companies, supra; Gateway Equipment Co., supra. Indeed, in similar circumstances the Board has included such lone residual employees in a petitioned-for unit. See, e.g., United Dairy Farmers Cooperative Assn., supra. Accordingly, based on the foregoing facts, I will include Heil in the unit.

CONCLUSION

For all of the foregoing reasons, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees employed by the Employer on the Islands of Guam and the Northern Marianas (Saipan) engaged in the service, repair, construction and installation of elevators and kindred equipment, including the warehouse employee on Guam; and excluding all other employees, guards and supervisors and as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued

subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL 126, AFL-CIO.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list containing the full names and addresses of all eligible voters which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1996); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, three (3) copies of an election eligibility list containing the full

names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties of the election. North Macon Health Care Facility, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the NLRB Subregion 37 Office, 300 Ala Moana Boulevard, Room 7-245, Post Office Box 50208, Honolulu, Hawaii 96850, on or before January 24, 2003. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement herein imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67[16] of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by January 31, 2003.

DATED at San Francisco, California, this 17th day of January 2003.

/s/ Timothy W. Peck
Timothy W. Peck, Acting Regional Director
National Labor Relations Board
Region 20
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177-2401-6750-0000
177-8520-0100-0000
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440-3325-0000-0000

[16] In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly dictates otherwise.